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6 UNITED STATES DISTRICT COURT
7 DISTRICT OF NEVADA
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9 UNITED STATES OF AMERICA,) 2:11-cr-00427-HDM-CWH
10 Plaintiff,) 2:13-cv-01068-HDM
11 vs.) ORDER
12 JOSE RIVERA-CARBAJAL,)
13 Defendant.)
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15 In his motion to vacate, set aside, or correct sentence
16 pursuant to 28 U.S.C. § 2255, defendant argues in one of his claims
17 that his conviction for battery constituting domestic violence
18 (third offense) was not a crime of violence, and that his attorneys
19 were therefore ineffective for failing to object to the 16-level
20 enhancement under U.S.S.G. § 2L1.2(b)(1)(A)(ii). To the extent it
21 can be argued that battery under Nevada law is not categorically a
22 crime of violence, see *United States v. Moreno-Tobar*, 452 Fed.
23 App'x 763 (9th Cir. 2011) (unpublished disposition); *Ortega-Mendez*
24 *v. Gonzales*, 450 F.3d 1010 (9th Cir. 2006); *Hobbs v. State of*
25 *Nevada*, 251 P.2d 177 (Nev. 2011), counsel should advise the court
26 of the evidence relied upon in determining that defendant was
27 subject to the 16-level enhancement. Accordingly, on or before
28 February 3, 2014:

1. The United States Probation Office shall provide to the court a copy of all documents that it had and that were available to defendant's attorneys relating to defendant's conviction for battery constituting domestic violence (third offense) (Presentence Report ¶ 27) and;

2. The government shall file any declarations of Paul Riddle, defendant's counsel at sentencing, and Alina Shell, defendant's counsel on appeal, identifying the evidence on which they relied to conclude that there was no reasonable argument to be made that the defendant was not subject to the 16-level enhancement.

IT IS SO ORDERED.

DATED: This 14th day of January, 2014.

Howard D McKibbin
UNITED STATES DISTRICT JUDGE